

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0129P**

**Income Tax**

**Calendar Year 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late payment penalty, and, penalty on underpayment of estimated tax.

II. **Tax Administration** – Interest

**Authority:** IC 6-8.1-10-1

The taxpayer protests the interest assessment.

**STATEMENT OF FACTS**

The late payment penalty and interest, and, penalty and interest for underpayment of estimated tax, was assessed on an income tax return for the calendar year 2001.

The taxpayer is an insurance company headquartered out-of-state.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer argues the negligence penalty should be waived as the error was the result of unintentional oversight. The taxpayer has the option of paying a premium tax or an income tax each year. This election is to be made in November of the tax year. The taxpayer normally paid the premium tax, but for 2001 decided to pay the income tax instead. However, this information was not communicated to the taxpayer's premium tax

department, and therefore, the premium tax department continued to make the estimated tax payments to the Indiana Insurance Department instead on the Indiana Department of Revenue. As the Indiana Department of Revenue did not get the estimated payments, the resultant income tax computation resulted in penalty and interest assessed for the underpayment of estimated tax, and, penalty and interest for late payment.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.

## **II. Tax Administration – Interest**

### **DISCUSSION**

The taxpayer protests the interest assessment.

IC 6-8.1-10-1 does not allow the waiver of interest. As such, the Department finds the assessment of interest proper and denies the interest protest.

### **FINDING**

The taxpayer's interest protest is denied.